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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,156	06/21/2000	Jeff Young	2230	6933

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EXAMINER

GROSS, KENNETH A

ART UNIT

PAPER NUMBER

2122

5

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

S-M-

Office Action Summary

Application No.

09/599,156

Applicant(s)

YOUNG ET AL.

Examiner

Kenneth A Gross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 37-51 is/are rejected.
- 7) ☒ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the amendment filed on March 26th, 2003.
2. Claims 1, 16, 17, 19, and 22 remain rejected under 35 U.S.C. 102(b). Claims 2-15, 18, 21, 23-35, and 37-51 remain rejected under 35 U.S.C. 103(a). For specific rejections of Claims 2-15, 17-19, 21-26, 28-41, and 43-51 see the Office Action filed on 12/19/2002. (Note: Claims 3, 5, 6-8, 17, 28, 33, and 39-51 have been amended to fix numerous 35 U.S.C. 112 2nd paragraph rejections and claim objections, and the scope of the claims has not been changed by these amendments).
3. The objections of Claims 27, and 39-51 have been withdrawn. The 35 U.S.C. 112 2nd rejections of Claims 1-26, 28, 30-32, 34-37, 40, 45, 47, and 48 have been withdrawn.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Luu (U.S. Patent Number 5,860,012).

In regard to Claim 1, Luu teaches: (1) initiating a connection at a server to the client machine (Column 1, lines 60-66); (2) transmitting an installation service that installs software, the installation service transmitted from the server to the client machine (Column 2, lines 2-6); and (3) executing the installation service on the client machine (Column 2, lines 2-6).

6. Claims 16, 17, 19, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by May (U.S. Patent Number 5,809,251).

In regard to Claim 16, May teaches a configuration manager for initiating a connection to the client machine (Column 13, lines 47-48) and also teaches an installation service transmitted to the client machine (Column 13, lines 59-64), which installs software on the client machine. May does not explicitly teach a data manager, but does teach a medium for evaluating information on a plurality of discovered machines (Column 13, lines 49-55 and Column 1, lines 49-63) and selecting client machines that need to be updated. The selected client machines are the ones that are scheduled for updates, and subsequently connected to at the time of the upgrade. (Column 13, lines 47-48).

In regard to Claim 20, May teaches that the configuration request comprises a client configuration record. When the client responds to the configuration request, it sends with it a client configuration record, indicating the version of the software being updated by the server (Figure 7A, items 90 and 91).

Claim Rejections – 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 2-15, 18, 21, 23-34, 38-39, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251).

In regard to Claim 27, Luu teaches: (1) initiating a connection at a server to the client machine (Column 1, lines 60-66); (2) transmitting an installation service from the server to the client machine (Column 2, lines 2-6); and (3) executing the installation service (Column 2, lines 2-6). Luu does not teach retrying the connection if an initial connection is not made. May, however, teaches retrying a connection by placing the connection request on a retry queue (Column 7, lines 61-63). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a method for installing software, as taught by Luu, where the method includes retrying the connection if the initial connection fails, as taught by May, since this would allow for more automation, and a more fault tolerant system.

9. Claims 42 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of Herrmann (U.S. Patent Number 5,995,756).

In regard to Claim 42, Luu teaches: (1) initiating a connection at a server to the client machine (Column 1, lines 60-66); (2) transmitting an installation service from the server to the client machine (Column 2, lines 2-6); and (3) executing the installation service (Column 2, lines 2-6). Luu does not teach determining whether a user that is logged onto the client has sufficient security rights, and if so, executing a process at the client to install the software. Herrmann, however, teaches checking user rights on a client-to-client basis, and allowing the client to download applications if their rights are approved (Column 10, lines 40-43 and lines 46-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

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invention to check security rights beforehand, and if the clients rights are approved, allow them to execute an installation process, as taught by Herrmann, and if their rights are not approved, transmit and automatically run an installation service as taught by Luu. The benefit of this is, the server can easily install software to clients with little security rights, without fear of a security breach.

10. Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Lerche (U.S. Patent Number 6,457,175).

11. Claims 43-47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Herrmann (U.S. Patent Number 5,995,756).

12. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Herrmann (U.S. Patent Number 5,995,756) and Lerche (U.S. Patent Number 6,457,175).

Response to Arguments

13. In response to the applicants arguments of the 35 U.S.C. 102(b) rejection of Claims 1 and 16 and the 35 U.S.C. 103(a) rejection of Claims 27 and 42, the applicant states that neither Luu nor May teach "an installation service that installs software". The applicant says that Luu "is silent as to how this installation software was put on the machine in the first place, let alone provide any teaching or suggestion indicating that the installation software can be automatically installed on each client machine." However, the applicant provides nothing in the claims that

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supports that the installation service is “also the already-installed and running installation software that installs that package.” The applicant simply claims an “installation service” that installs software. To clarify what this term refers to, the following definitions are provided from the “Microsoft Press Computer Dictionary: Third Edition”:

Service - A program or routine that provides support to other programs. See also *utility*.

Utility – A program designed to perform a particular function. See also *application*.

Application – A program designed to assist in the performance of a specific task.

Program – A sequence of instructions that can be executed by a computer.

In this way, a service can be defined as a sequence of instructions that can be executed by a computer that is designed to perform a particular function or task. In terms of “installation service”, this function or task is the installation of software. Luu does teach a sequence of commands that are executed, and these commands install the application software (Column 2, lines (Column 2, lines 3-6).

In regard to argument that “the cited text of May makes no indication regarding any such device selecting a client, or whether any selection occurred at all”, it should be noted that the act of selecting is shown in May by way of evaluating version information on computer systems and deciding whether computer systems require updates or not. If updates are required, the server selects the client for upgrading. Furthermore, the data manager in the claimed language performs two tasks: (1) evaluating information associated with a plurality of discovered machines. Since May does teach evaluating information associated with a machine, and since it can be assumed that multiple machines are examined (Figure 2 and Column 1, lines 49-63), May does teach evaluating information associated with a plurality of machines; (2) selecting one of

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the remote client machines as a selected client machine. It is interpreted here that “selected client machine” is the machine that is to be updated. May does teach singling out machines that need to be updated, and hence they are selected. The wording of the claim gives no indication that client machines are selected based on the information associated with the discovered machines. Therefore, the data manager in the claimed language does *not* evaluate information associated with a plurality of discovered machines, and select one of the client machines for update from among the plurality of discovered machines based on the information.

Allowable Subject Matter

14. Claim 36 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to Claim 36, Luu, May, and Lurche teach the method of Claim 35, but do not teach removing data written to the configuration request when reattempting execution of the configuration request. It is obvious that there is an address associated with the client request, in order for the server to successfully send the request to the client. This address is data indicative of the installation service executing on the client machine. However, it is not clear as to why this address would be removed when the request is reattempted.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth A Gross whose telephone number is (703) 305-0542. The examiner can normally be reached on Mon-Fri 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory A Morse can be reached on (703) 308-4789. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7240 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

KAG
May 16, 2003


GREGORY MORSE
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